

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ALFREDO PURATA,

Petitioner,

vs.

JAMES YATES, Warden,

Respondent.

CASE NO. 08cv869-IEG(WMc)

Order Granting Petitioner's Motion to Dismiss Successive Petition [Doc. No. 9]; Denying as Moot Respondent's Motion to Dismiss [Doc. No. 6]

Petitioner, a state prisoner proceeding pro se, filed a petition for a writ of habeas corpus challenging his August 10, 1994 conviction in San Diego County Superior Court Case No. SCD103277. Petitioner previously attacked this same conviction, under the name Alfredo Moreno, in Case No. 02cv1478-BTM. In response to the petition, Respondent moved to dismiss arguing this is a successive petition. Petitioner, thereafter, moved to dismiss the petition without prejudice to allow him to obtain permission from the Ninth Circuit to file this successive petition.

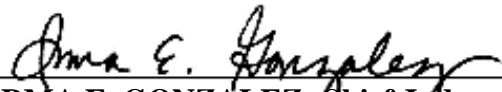
Pursuant to 28 U.S.C. § 2244(b)(3)(A), "[b]efore a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application." Until Petitioner obtains permission from the Ninth Circuit Court of Appeals, this Court lacks jurisdiction to consider the current petition. Burton v. Stewart, 549 U.S. 147, ___, 127 S. Ct. 793, 799 (2007).

Therefore, the Court hereby GRANTS Petitioner's motion to dismiss [Doc. No. 9], and

1 DENIES AS MOOT Respondent's motion to dismiss [Doc. No. 6.] The Clerk will provide
2 Petitioner a copy of the Ninth Circuit's form for requesting leave to file a second or successive
3 petition along with a copy of this order.

4 **IT IS SO ORDERED.**

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6 **DATED: August 26, 2008**

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8 **IRMA E. GONZALEZ, Chief Judge**
9 **United States District Court**